February 12, 1926, and transported from the State of Texas into the State of Colorado, and charging misbranding in violation of the food and drugs act. The cottonseed cake and a portion of the cottonseed meal were labeled in part: "Crude Protein not less than 43.00 Per Cent." The remainder of the cottonseed meal was labeled in part: "43% Protein Cottonseed Meal Prime Quality Manufactured by Quanah Cotton Oil Company Quanah, Texas Guaranteed Analysis *Crude Protein not less than 43.00 Per Cent.*"

Misbranding of the articles was alleged in the libels for the reason that the statements "43% Protein" and "Crude Protein not less than 43.00 Per Cent," as the case might be, were false and misleading and deceived and misled the purchaser, since the said products did not contain 43 per cent of protein.

On March 11, and April 2, 1926, respectively, the Quanah Cotton Oil Co., Quanah, Tex., having appeared as claimant for the property, decrees were entered, finding the products mislabeled in violation of said act, and it was ordered by the court that the said products be released to the claimant upon payment of the costs of the proceedings and the execution of bonds in the aggregate sum of $1,550, conditioned in part that they not be sold or otherwise disposed of until relabeled to show the correct contents.

W. M. JARDINE, *Secretary of Agriculture.*

14371. Alleged adulteration of wheat middlings. U. S. v. 200 Sacks of Wheat Middlings. Tried to the court. Libel ordered dismissed. (F. & D. No. 12659. I. S. No. 24527–r. S. No. C–1943.)

On May 24, 1920, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 200 sacks of wheat middlings. On September 14, 1920, and March 19, 1923, respectively, amended libels were filed in the case. It was alleged in the libel as amended that the article had been shipped by the Ismert-Hincke Milling Co., from Kansas City, Kans., April 8, 1920, that it had been transported from the State of Kansas into the State of Michigan, and remained in the original sacks at Ann Arbor, Mich., and that it was adulterated in violation of the food and drugs act. The article was labeled in part: "A. B. C. Middlings Wheat Middlings with mill run ground screenings * * * Manufactured By The Ismert-Hincke Milling Co. Kansas City, Kansas, Topeka, Kansas."

Adulteration of the article was alleged in the libel for the reason that it had been mixed and powdered in a manner whereby inferiority was concealed.

On May 2, 1924, the Ismert-Hincke Milling Co., Kansas City, Kans., having appeared as claimant for the property, the case was submitted to the court on an agreed statement of facts together with depositions to prove the issues agreed upon. On May 20, 1926, judgment was entered for the said claimant as will more fully and at large appear from the following opinion of the court (Simons, *D. J.*):

"This is a libel filed by the Government against 200 sacks of middlings in statutory proceedings pursuant to section 10 of the food and drugs act (act of Congress of June 30, 1906, chapter 3915, 34 Statutes at Large, 771), for the seizure and confiscation of such middlings on the ground that they are adulterated within the meaning of section 7 of said act. The libel as originally filed alleged that said middlings, which were there referred to as 'alleged middlings,' were also misbranded within the meaning of section 8 of the act, but by amendment that charge was later withdrawn, and it is now conceded by the Government that the articles in question are in fact as they were labeled, middlings, as hereinafter more fully described. The sole statutory basis for the claim of adulteration advanced by the Government is that said middlings were mixed and powdered in a manner whereby * * * inferiority is concealed.

"After seizure of these middlings on the libel, the Ismert-Hincke Milling Co., a Kansas corporation, filed its intervening petition herein as claimant and its answer denying both the misbranding and the adulteration alleged. The case is now before the court for final decree upon the pleadings, an agreed statement of facts, and depositions taken in accordance therewith. The jurisdictional allegations of the libel, including that concerning the requisite interstate shipment of the products involved, are not disputed and have been proved. The food and drugs act, already cited, prohibits, by fine or imprisonment or both, the interstate shipment of any article used for food by man or other animals, which is adulterated within the meaning of the act. Section 10

authorizes confiscation of such adulterated food. Section 7 of the statute provides in part as follows:

"'For the purposes of this act an article shall be deemed to be adulterated:

"'In the case of food:

"'First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"'Second. If any substance has been substituted wholly or in part for the article.

"'Third. If any valuable constituent of the article has been wholly or in part abstracted.

"'Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

"'Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of the act shall be construed as applying only when said products are ready for consumption.

"'Sixth. If it consist in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.'

"As already stated, the only charge made by the Government with respect to the middlings in question is that they are mixed and powdered in a manner whereby * * * inferiority is concealed. The agreed statement of facts is, in full, as follows:

"The United States of America by United States attorney for the Eastern District of Michigan, and Glen A. Wisdom, Kansas City, Mo., attorney for Ismert-Hincke Milling Company, claimant, hereby stipulate that the foregoing action be submitted to this honorable court on the following agreed statement of facts together with depositions to prove issues agreed upon herein:

"1. That 'Wheat middlings with mill run ground screenings not exceeding 8%' has been generally known as any one of the by-products of the milling of wheat flour, exclusive of bran, which resulted after the major flour-recovering processes and consisted of wheat offal which would pass through a screen having eighteen or more meshes per linear inch, to which was added ground mill-run screenings not exceeding 8%. An eighteen mesh screen will allow larger particles to go through than a twenty-two mesh. Middlings being ordinarily used as a hog feed, the quality and market value thereof is usually judged by its fineness of texture and lightness of color, which to the feeder are indicative of low fiber content and high feeding value. Therefore, the quality of middlings produced as above described was for all practical purposes dependent upon the fineness of mesh employed, since a finer mesh excluded more of the undesirable fibrous bran particles, and thus the remaining material contained a greater proportion of the desirable particles of the wheat berry known to be of high feeding value.

"2. That the aforesaid 200 sacks of alleged middlings seized in this action is one of the by-products of the milling of flour which results after the major flour-recovering processes and consists of wheat offal which was passed through a screen having eighteen meshes per linear inch, to which was added mill-run screenings not exceeding 8%. It is agreed that this product is wheat middlings with mill run ground screenings not exceeding 8%. This mixture is then passed through a grinder wherein it is pulverized. The composition, color, and texture of the resulting product is practically identical with a product manufactured by a process not including a grinder and wherein a screen of sufficiently finer mesh had been employed, except that it contains that additional amount of bran coat which would have passed through a screen having eighteen meshes per linear inch, and which would not have passed through a screen of finer mesh, the entire product having been reduced to fine particles by the grinder. Running the product through the grinder does not change the composition except to evaporate the moisture from one to two per cent, but does improve the color and texture.

"3. The libel contains the charge that the product seized in the foregoing action is mixed and powdered in a manner whereby inferiority is concealed. Therefore, the issue in this case is, whether the use of the grinder mixes and

powders the product in a manner whereby inferiority is concealed or whether it increases the feeding value to such an extent that the product is not inferior to a product of like appearance manufactured by a process without the grinder.

"As already observed, the single, decisive question here involved is the question of fact as to whether the process described in the stipulation of facts conceals any inferiority in the middlings thereby produced. After careful examination and consideration of the depositions and of the entire record, I am fully satisfied, and I find, that the question just stated must be answered in the negative. There is no necessity nor occasion for here reciting or reviewing the testimony in detail. It is sufficient to state that not only does such testimony fail to sustain the burden of the proof resting upon the Government in this regard, but that the record is affirmatively clear and convincing to the effect that the middlings produced by the process in question are, in appearance, texture, composition, digestibility, and in all other respects equal, if not superior, to middlings produced by any other known process; that said process reduces the moisture in such middlings and thereby increases their feeding value for the purposes for which they are intended; that said process produces a more finely ground product and thereby increases its digestible quality; and, in general, that the process complained of by the Government does not conceal, and is not in any way connected with or related to any inferiority in, or in respect to, such middlings.

"In accordance with the request of the Government, the foregoing views and conclusions may be treated as formal findings of fact and of law, respectively. No applicable decisions have been cited by either party nor discovered by the court in its independent search of the authorities. It is admitted by the Government that there are no such decisions. The single case cited by the claimant (Lexington Mill & Elevator Co. *vs.* U. S., 232 U. S. 399), while not fully in point, is at least more helpful to the claimant than to the Government.

"For the reasons stated the claimant is entitled to a decree dismissing the libel and such a decree will be entered."

W. M. JARDINE, *Secretary of Agriculture.*

14372. Adulteration and misbranding of rice bran. U. S. v. 200 Sacks of Rice Bran. Default decree of condemnation, forfeiture and destruction. (F. & D. No. 21089. I. S. No. 7458-x. S. No. E-5719.)

On May 21, 1926, the United States attorney for the Northern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 200 sacks of rice bran, remaining in the original unbroken packages at Douglasville, Ga., alleging that the article had been shipped by the Leona Rice Mills, from New Orleans, La., on or about March 1, 1926, and transported from the State of Louisiana into the State of Georgia, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: "Leona Rice Mill New Orleans, La. Rice Bran Guaranteed Analysis Protein 11.00 Per Cent. Fat 13.00 Per Cent. Fibre 9.97 Per Cent."

Adulteration of the article was alleged in the libel for the reason that a substance containing excessive rice hulls and excessive fiber, and deficient in protein and fat, had been mixed and packed therewith so as to reduce, lower and injuriously affect its quality and strength and had been substituted in part for said rice bran.

Misbranding was alleged for the reason that the statements "Rice Bran Guaranteed Analysis Protein 11.00 Per Cent. Fat 13.00 Per Cent. Fibre 9.97 Per Cent," borne on the label, were false and misleading and deceived and misled the purchaser, in that the product was deficient in protein and fat and did not contain 11.00 per cent of protein and did not contain 13.00 per cent of fat, and did contain more than 9.97 per cent of crude fiber, and did contain excessive crude fiber. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article.

On June 25, 1926, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

W. M. JARDINE, *Secretary of Agriculture.*